

Introduced by Senators Ducheny and Morrow

(Principal coauthor: Senator Ashburn)

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February 22, 2005

An act to amend Sections 3651, 3653, and 17560 of, and to add
Section 17440 to the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 1082, as introduced, Ducheny. Child support: military
reservists.

(1) Existing law sets forth provisions by which a support order may
be revised by the court and specifies that a support order may not be
modified or terminated as to an amount that accrued before filing of a
motion or an order to show cause to modify, except as specified.

This bill would create an additional exception to this rule to permit
service members activated to United States military duty or National
Guard service to request modification of a support order, as specified.
The bill would require the service member to indicate the date of
deployment and would require the court, if possible, to schedule a
hearing on the matter prior to that date, or grant a stay of proceedings
consistent with certain federal time lines for stays. The bill would also
require the Judicial Council to develop any forms and procedures
necessary to implement those provisions.

(2) Existing law permits an order modifying or terminating a
support order to be made retroactive to the date of the filing of the

notice of motion or order to show cause to modify or terminate or to any subsequent date, except as specified.

This bill would provide that if an order modifying or terminating a support order is entered due to a change in income resulting from the activation to military service or National Guard duty and deployment overseas for either the support obligor or support obligee, the order shall be made retroactive in accordance with specified requirements.

The bill would also require the Department of Child Support Services to work with the military and National Guard to ensure that information regarding the ability of service members to have support orders modified based on a change of income is made readily available to those service members. The bill would additionally require that department to develop a form for completion by the service member to allow the local child support agency to proceed with a motion for modification of a support order without the service member being required to appear. By placing new duties on local child support agencies, the bill would impose a state-mandated local program.

(3) Existing law establishes an arrears collection enhancement process pursuant to which the Department of Child Support Services may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to the California Work Opportunity and Responsibility to Kids Act (CalWORKs program).

This bill would provide that the acceptance of an offer in compromise shall be deemed to be in the state's best interest with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard, was activated to military service, and failed to modify the support order to reflect the reduction in income. The bill would also require the director of that department to establish specified rules in accordance with this provision.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3651 of the Family Code is amended to
2 read:

3 3651. (a) Except as provided in subdivisions (c) and (d) and
4 subject to Article 3 (commencing with Section 3680) and
5 Sections 3552, 3587, and 4004, a support order may be modified
6 or terminated at any time as the court determines to be necessary.

7 (b) Upon the filing of a supplemental complaint pursuant to
8 Section 2330.1, a child support order in the original proceeding
9 may be modified in conformity with the statewide uniform
10 guideline for child support to provide for the support of all of the
11 children of the same parents who were named in the initial and
12 supplemental pleadings, to consolidate arrearages and wage
13 assignments for children of the parties, and to consolidate orders
14 for support.

15 (c) (1) Except as provided in *paragraph (2)* and subdivision
16 (b), a support order may not be modified or terminated as to an
17 amount that accrued before the date of the filing of the notice of
18 motion or order to show cause to modify or terminate.

19 (2) *If a party to a support order is activated to United States*
20 *military duty or National Guard service, the service member may*
21 *file a notice of activation of military service and request to*
22 *modify a support order by informing the court and the other*
23 *party of the request to modify the support order based on the*
24 *change in circumstance. The service member shall indicate the*
25 *date of deployment, and if possible, the court shall schedule the*
26 *hearing prior to that date. If the court cannot hear the matter*
27 *prior to the date of deployment, the court shall grant a stay of*
28 *proceedings consistent with the time lines for stays set forth in*
29 *Section 522 of Title 50 of the United States Code.*

30 (d) An order for spousal support may not be modified or
31 terminated to the extent that a written agreement, or, if there is no
32 written agreement, an oral agreement entered into in open court
33 between the parties, specifically provides that the spousal support
34 is not subject to modification or termination.

(e) This section applies whether or not the support order is based upon an agreement between the parties.

(f) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 shall apply.

(g) *The Judicial Council shall develop any forms and procedures necessary to implement paragraph (2) of subdivision (c).*

SEC. 2. Section 3653 of the Family Code is amended to read:

3653. (a) An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided in subdivision (b) or by federal law (42 U.S.C. Sec. 666(a)(9)).

(b) If an order modifying or terminating a support order is entered due to the unemployment of either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of motion or order to show cause to modify or terminate or the date of unemployment, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record.

(c) *If an order modifying or terminating a support order is entered due to a change in income resulting from the activation to United States military service or National Guard duty and deployment overseas for either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of activation, notice of motion, order to show cause to modify or terminate, or the date of activation, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record.*

(d) If an order decreasing or terminating a support order is entered retroactively pursuant to this section, the support obligor may be entitled to, and the support obligee may be ordered to repay, according to the terms specified in the order, any amounts

1 previously paid by the support obligor pursuant to the prior order
2 that are in excess of the amounts due pursuant to the retroactive
3 order. The court may order that the repayment by the support
4 obligee shall be made over any period of time and in any manner,
5 including, but not limited to, by an offset against future support
6 payments or wage assignment, as the court deems just and
7 reasonable. In determining whether to order a repayment, and in
8 establishing the terms of repayment, the court shall consider all
9 of the following factors:

10 (1) The amount to be repaid.

11 (2) The duration of the support order prior to modification or
12 termination.

13 (3) The financial impact on the support obligee of any
14 particular method of repayment such as an offset against future
15 support payments or wage assignment.

16 (4) Any other facts or circumstances that the court deems
17 relevant.

18 SEC. 3. Section 17440 is added to the Family Code, to read:

19 17440. (a) The Department of Child Support Services shall
20 work with all branches of the United States military and the
21 National Guard to ensure that information is made available
22 regarding the rights and abilities of activated service members to
23 have their support orders modified based on a change in income
24 resulting from their activation, or other change of circumstance
25 affecting the child support calculation.

26 (b) The department shall develop a form for completion by the
27 service member that will allow the local child support agency to
28 proceed with a motion for modification without the service
29 member being required to appear. The form shall contain only
30 the information necessary for the local child support agency to
31 proceed with the motion.

32 (c) Within five business days of receipt of a properly
33 completed form, the local child support agency shall bring a
34 motion to modify the support order. The local child support
35 agency shall bring the motion if the change in circumstances
36 results in any change in the dollar amount of the support order.

37 (d) The department shall work with the United States military
38 to have this form and the form developed pursuant to Section
39 3651 distributed at all mobilization stations or other appropriate

1 locations to ensure timely notification to all activated personnel
2 of their rights and responsibilities.

3 SEC. 4. Section 17560 of the Family Code is amended to
4 read:

5 17560. (a) The department shall create a program
6 establishing an arrears collection enhancement process pursuant
7 to which the department may accept offers in compromise of
8 child support arrears and interest accrued thereon owed to the
9 state for reimbursement of aid paid pursuant to Chapter 2
10 (commencing with Section 11200) of Part 3 of Division 9 of the
11 Welfare and Institutions Code. The program shall operate
12 uniformly across California and shall take into consideration the
13 needs of the children subject to the child support order and the
14 obligor's ability to pay.

15 (b) If the obligor owes current child support, the offer in
16 compromise shall require the obligor to be in compliance with
17 the current support order for a set period of time before any
18 arrears and interest accrued thereon may be compromised.

19 (c) Absent a finding of good cause, any offer in compromise
20 entered into pursuant to this section shall be rescinded, all
21 compromised liabilities shall be reestablished notwithstanding
22 any statute of limitations that otherwise may be applicable, and
23 no portion of the amount offered in compromise may be
24 refunded, if either of the following occurs:

25 (1) The department or local child support agency determines
26 that the obligor did any of the following acts regarding the offer
27 in compromise:

28 (A) Concealed from the department or local child support
29 agency any income, assets, or other property belonging to the
30 obligor or any reasonably anticipated receipt of income, assets, or
31 other property.

32 (B) Intentionally received, withheld, destroyed, mutilated, or
33 falsified any information, document, or record, or intentionally
34 made any false statement, relating to the financial conditions of
35 the obligor.

36 (2) The obligor fails to comply with any of the terms and
37 conditions of the offer in compromise.

38 (d) Pursuant to subdivision (k) of Section 17406, in no event
39 may the administrator, director, or director's designee within the
40 department, accept an offer in compromise of any child support

1 arrears owed directly to the custodial party unless that party
2 consents to the offer in compromise in writing and participates in
3 the agreement. Prior to giving consent, the custodial party shall
4 be provided with a clear written explanation of the rights with
5 respect to child support arrears owed to the custodial party and
6 the compromise thereof.

7 (e) Subject to the requirements of this section, the director
8 may delegate to the administrator of a local child support agency
9 the authority to compromise an amount of child support arrears
10 that does not exceed five thousand dollars (\$5,000). Only the
11 director or his or her designee may compromise child support
12 arrears in excess of five thousand dollars (\$5,000).

13 (f) For an amount to be compromised under this section, the
14 following conditions shall exist:

15 (1) (A) The administrator, director or director's designee
16 within the department determines that acceptance of an offer in
17 compromise is in the best interest of the state and that the
18 compromise amount equals or exceeds what the state can expect
19 to collect for reimbursement of aid paid pursuant to Chapter 2
20 (commencing with Section 11200) of Part 3 of Division 9 of the
21 Welfare and Institutions Code in the absence of the compromise,
22 based on the obligor's ability to pay.

23 (B) *Acceptance of an offer in compromise shall be deemed to*
24 *be in the best interest of the state with regard to arrears that*
25 *accrued as a result of a decrease in income when an obligor was*
26 *a reservist or member of the National Guard, was activated to*
27 *United States military service, and failed to modify the support*
28 *order to reflect the reduction in income. The director shall*
29 *establish rules that compromise, at a minimum, the amount of*
30 *support that would not have accrued had the order been modified*
31 *to reflect the reduced income earned during the period of active*
32 *military service.*

33 (2) Any other terms and conditions that the director establishes
34 that may include, but may not be limited to, paying current
35 support in a timely manner, making lump sum payments, and
36 paying arrears in exchange for compromise of interest owed.

37 (3) The obligor shall provide evidence of income and assets,
38 including, but not limited to, wage stubs, tax returns, and bank
39 statements and establish all of the following:

1 (A) That the amount set forth in the offer in compromise of
2 arrears owed is the most that can be expected to be paid or
3 collected from the obligor's present assets or income.

4 (B) That the obligor does not have reasonable prospects of
5 acquiring increased income or assets that would enable the
6 obligor to satisfy a greater amount of the child support arrears
7 than the amount offered, within a reasonable period of time.

8 (C) That the obligor has not withheld payment of child support
9 in anticipation of the offers in compromise program.

10 (g) A determination by the administrator, director or the
11 director's designee within the department that it would not be in
12 the best interest of the state to accept an offer in compromise in
13 satisfaction of child support arrears shall be final and not subject
14 to the provisions of Chapter 5 (commencing with Section 17800)
15 of Division 17, or subject to judicial review.

16 (h) Any offer in compromise entered into pursuant to this
17 section shall be filed with the appropriate court. The local child
18 support agency shall notify the court if the compromise is
19 rescinded pursuant to subdivision (c).

20 (I) Any compromise of child support arrears pursuant to this
21 section shall maximize to the greatest extent possible the state's
22 share of the federal performance incentives paid pursuant to the
23 Child Support Performance and Incentive Act of 1998 and shall
24 comply with federal law.

25 (j) The department shall ensure uniform application of this
26 section across the state.

27 (k) The department shall consult with the Franchise Tax Board
28 in the development of the program established pursuant to this
29 section.

30 (l) The department shall report to the Legislature on the results
31 of the program established pursuant to this section no later than
32 June 30, 2006.

33 (m) This section shall remain in effect only until January 1,
34 2007, and as of that date is repealed unless a later enacted statute,
35 that is enacted before January 1, 2007, deletes or extends that
36 date.

37 SEC. 5. If the Commission on State Mandates determines that
38 this act contains costs mandated by the state, reimbursement to
39 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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